IN THE SUPREME COURT OF PUERTO RICO

Partido Acción Civil Petitioner v. Commonwealth of Puerto Rico, et al. Appellees	)	No. AC-1999-20 Certiorari

Opinion of the Court issued by Associate Judge Hon. Hernández Denton

San Juan, Puerto Rico, February 25, 2000.

The Partido Acción Civil (Civil Action Party) requests the reversal of a judgement of the Appeals Circuit Court which upheld the constitutionality of Arts. 3.001(3) and 3.002 of the Electoral Act, Public Law No. 4 of December 1977, as amended. 16 L.P.R.A. ss. 3101 (3) and 3102.

After considering said provisions, none incur in constitutional defects whatsoever, we confirm.

I

On October 6, 1998, the Partido Acción Civil, a political group interested in becoming a party by petition to participate in the elections of the year 2000, presented a recourse of declaratory judgement and preliminary and permanent injunction before the Court of First Instance, challenging the constitutionality of Arts. 3.001 (3) and

3.002 of the Electoral Act, Public Law No. 4 of December 4, 1977, as amended, 16 L.P.R.A ss. 3103 (3) and 3102. Said provisions require that the petitions to register a party by petition be sworn before a notary public and presented before the State Electorate Commission (Herein the C.E.E.) within seven days after the oath in question has been taken. It was also requested that the C.E.E. adopt for the registration of Partido Acción Civil as a party by petition the same requirements in place for candidates interested in the internal primaries of already registered political parties.[1]

The Court of First Instance denied the complaint filed. It upheld the constitutionality of the requirements imposed by articles 3.001(3) and 3.002 of the Electoral Act, considering the differences between the requirements established by law for the registration of a political party by petition and for the primary activities of an already registered party, which answer to valid and legitimate interests of the State. It concluded that for its registration as a political party by petition, the Partido Acción Civil would not be able to require of the C.E.E. treatment similar to that of already registered parties.

Not being satisfied with said determination, the Partido Acción Civil went before the Appeals Court. Having submitted their appeal, the Partido Acción Civil presented a motion of aid of jurisdiction requesting the

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[1] Art. 4.011 of the Electoral Act, 16 L.P.R.A. sec 3161, provides that such petitions be sworn to before officers authorized under the law to take oaths and before any elector authorized by the C.E.E. to perform said function at the petition of each candidate in the primaries.

authorization for the collection of endorsements using *ad hoc* notaries designated by the C.E.E. and an order so that the C.E.E. could receive all the endorsements, even those presented after the seven-day period established under the law. The Appeals Court confirmed the ruling appealed.

In due time, the Partido Acción Civil presented before us an appeals recourse, accompanied by aid of jurisdiction motion so that we would nullify Article 3. 001 (3) of the Electoral Act regarding the requirement that the registration endorsements be sworn to before a Notary Public. We accept the appeal as a *certiorari*, but we deny the motion in aid of jurisdiction.[2]

In summary, the Partido Acción Civil alleges that the ruling courts erred: (1) in concluding that the provisions challenged the Electoral Act did not violate the rights to association, expression and vote effective under the doctrine of access to the ballot; (2) upon summarily dismissing the complaint; (3) upon dismissing the complaint without holding an evidentiary hearing, given that this allegedly violated their constitutional rights by not having provided due process under the law of procedure; (4) upon concluding that there is no violation of constitutional provisions regarding the Equal Protection of the Laws with the requirement that attorneys notarize the endorsements of the parties by petition be attorneys.

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[2] After issuing the *certiorari*, the Partido Acción Civil present three motions in aid of jurisdiction which were denied. Resolutions of the Puerto Rico Supreme Court of August 4, 1999, October 27, 1999 and January 4, 2000.

Having examined the original records, as well as extensive pleas and briefs from all the parties, we resolve.

II

The correct adjudication of the facts before us require that we examine and harmonize the important role of the political parties in our jurisdiction, with the obligation of the Legislative Assembly to safeguarding the rights of the electorate in exercising their vote in the context of elections that are fair, and free of fraud, confusion and chaos.

The Constitution of the Commonwealth of Puerto Rico expressly recognizes the importance of political parties within our governmental organization with the establishment of the formula guarantee of minority representation in the Legislature. Art. III, Sec. 7, Const. E.L.A.; *Silva v. Hernández Agosto*, 118 D.P.R. 45 (1986). In exercising our adjudicative function, this court has recognized that the political parties have assumed an ever more extensive and important role in the everyday functioning of modern states, and that there is a correlation between the party system and constitutional order. *Fuster v. Busó*, 102 D.P.R. 327 (1974).

The existence of political patties in our jurisdictions is eminently tied to the right of each citizen to participate in the electoral process, a basic element to our democratic system, which arises from the right to vote, expressly established in our Bill of Rights. Art. II, Sec. 2, Const. E.L.A. Under our constitutional law, the right to vote does not only give the electorate the right to vote in elections, but also covers the right to have included in the

polls options which reflect contemporary political tendencies of the voter. *Ortiz v. Barreto*, 110 D.P.R. 84 (1980). The right to vote, in its dimension of political participation, includes the right to form groups to participate in the electoral process.

Although the fundamental character of the right to vote in a given manner, and the right to form groups for political purposes through an electoral poll is undoubted, it is not an absolute right. *Ramirez de Ferrer v. Mari Bras*, res. November 18, 1997, res. Of November 18, 1997, 144 D.P.R.___ (1997), concurring opinion of Chief Judge Andreu García; For illustration purposes see *Munro v. Socialist Workers Party*, 479 U.S. 189 (1986); *Burdick v. Takushi*, 504 U.S. ___, 119 L.Ed.2d 245 (1992). It is up to the Legislative Assembly, in its exercise of the constitutional mandate under Art. VI, Sec. 4 of our Constitution which provides that "the law will determine everything concerning the electoral process and the registration of voters, as well as everything concerning political parties and candidates," to determine and regulate everything concerning the electoral process, including political parties and candidates.[sic]

The authority granted to the Legislative Assembly by Art. VI, Sec. 4, although not absolute, is broad and extensive. *P.S.P., P.P.D., P.I.P. v. Romero Barceló*, 110 D.P.R. 248 (1980). It is only in this manner that the State can fulfill its obligation to protect the purity of the electoral process. That is, the Legislative Assembly has the authority and the obligation to approve any regulation which, without unnecessarily obstructing the right to vote in all its dimensions, encourages a fair and orderly electoral process free of fraud, and is honest and wholesome. *P.S.P.*,

P.P.D., P.I.P. v. Romero Barceló, supra; P.N.P. v. Tribunal Electoral, 104 D.P.R. 741 (1976); *P.S.P v. Com. Estatal de Elecciones*, 110 D.P.R. 400 (1980). Under this power, upon regulating the access of the groups, candidates or formulas to the polls, the State is put in a position where, by its nature, has the effect of restricting and limiting the right to participate in the electoral process. For illustration purposes see, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986).

It is within this constitutional background that we must analyze the claims of the Partido Acción Civil

III

The Partido Acción Civil alleges that the court of [first] instance erred in its summary judgement by not taking into consideration all material facts not disputed by the defendant and by not granting them the opportunity to demonstrate, through the preponderance of evidence that the provisions challenged are unconstitutional in their application.

Rule 36 of the Civil Procedure, L.P.R.A. Ap. III, R. 36, regulates everything concerning summary judgements. The purpose of said mechanism is to speed up the handling of cases, allowing for judgement without the need to hold an evidentiary hearing, when the documents not in dispute attached to the request and the totality of the record, establishes that there is no controversy over the material facts, thus only requiring the application of law. *Medina v. M.S.&D. Química P.R. Inc.*, 135 D.P.R. 176 (1994); *Cuadrado v. Santiago*, 126 D.P.R. 272 (1990).

It is up to movant to demonstrate not only that there is no real substantial controversy regarding a material fact, but also that as a matter of law, judgement in its favor is appropriate. *Pilot Life Ins. v. Crespo Martínez*, 136 D.P.R. 624 (1994). The court can issue summary judgement in favor of a party in the litigation which did not request said remedy if enough basis is found in the record. *Audiovisual Language, etc v. Natal Hermanos*, res. of December 15, 1997, 144 D.P.R. ___ (1997).

We have highlighted in the past that "the fact that a party presents a motion for summary judgement is no guarantee that once a determination is made to uphold it, it is necessary to rule in favor of the party that presented it." *Consejo de Titulares del Condominio Parkside, etc. v. MGIC Financial Corporation, Inc.*, 129 D.P.R. 538 (1991). The court must analyze the facts in the most favorable manner for the party opposed and issue judgement in favor of the party assisted by law. *Colegio de Ingenieros v. A.A.A.*, 131 D.P.R. 735 (1992).

As is reflected in the record, the Partido Acción Civil filed a motion for summary judgement in which it reiterated the arguments highlighted in the complaint and enumerated the facts exposed in the complaint which allegedly were not in dispute by the codefendants. The codefendants opposed summary judgement. The court of [first] instance, based on the documents and admissions by the parties, outlined a series of material facts about which there was no real substantial controversy. It then went on to examine the applicable law and to formulate pertinent conclusions of law. It determined, in virtue of the law in effect in our jurisdiction, it was appropriate to deny the request for summary judgement presented by

the Partido Acción Civil and issue judgement denying the complaint summarily.

The Appeals Circuit Court concluded that the Court of First Instance acted correctly in making use of the summary judgement recourse. Upon evaluating said recourse, the appeals forum concluded that the alleged facts in the conflict presented by the Partido Acción Civil in appeal were intended to overturn the summary ruling, and constitute opinions and particular conclusions by the appealing party. Said conclusions and opinions, given that they are not supported by specific facts, have no evidentiary value and are insufficient to demonstrate the existence of the conclusions there. Given that they constitute nothing but speculations, they should not be considered as facts in the summary judgement process in determining if there exists a true conflict about material facts. *Corp. Presiding Bishop CJC of LDS v. Purcell,* 117 D.P.R. 714 (1986). Having considered, as the appeals court correctly determined, that the court of first instance was not obliged to consider the conclusions and opinions of the Partido Acción Civil as material facts not in controversy, we concluded that the case at hand meets the procedural and substantive requirements for a summary judgement. Therefore, the ruling forum did not overstep its authority in utilizing the summary judgement mechanism in the case at hand.

On the other hand, the Partido Acción Civil maintains that the court of first instance incurred in a violation of its due process in denying the opportunity to establish, in an evidentiary hearing, the alleged unconstitutionality of the provisions challenged. This is not right.

In the procedural aspect, the due process clause imposes on the State the obligation to guarantee any interference with the interests of liberty and of property of the individual be through a procedure which is in essence fair and equal. We previously established that the due process of the procedural law is not a rigorous mold which takes place abstractly, given that its nature is eminently circumstantial and pragmatic, not dogmatic. Each case requires a contentious evaluation of the circumstances involved. *Quiles Rodríguez v. Superintendente de la Policía*, res. November 2, 1995, 139 D.P.R.___ (1995); *Rivera Rodríguez & Co. v. Lee Stowell Taylor*, 133 D.P.R. 881 (1993); *Fac. C. Soc. Aplicads, Inc. v. C.E.S.*, 133 D.P.R. 521 (1993).

In order to have the protection offered under this right in effect, there must be an individual interest of liberty or property at stake. Once this requirement has been fulfilled, there must be a determination as to the procedure required ("What process is due"). *Rivera Santiago v. Srio de Hacienda*, 119 D.P.R. 265, 274 (1987)

In order to make such a determination, it is necessary to analyze the following factors: (1) the individual interests affected by the official action; (2) the risk that an erroneous ruling will deprive the person of the interest protected through the process used and the probable value of additional or different guarantees; and (3) the governmental interest protected by the summary action and the possibility of using alternate methods. *Vélez Ramírez v. Romero Barceló*, 112 D.P.R. 716 (1982); *Matthews v. Elridge*, 424 U.S. 319, (1986). Depending on the circumstances, diverse situations could require different types of procedures, but the general requirement always persists

in that the governmental process must be fair and impartial.

Our civil procedural order has determined that the litigants are not deprived of their rights to a fair and impartial process when complying with certain requirements, and at the request of one party, to the court is shown that it is unnecessary to hold a trial. In such an event, when there is no controversy as to the material facts, there is no need to hold an evidentiary hearing to receive or elucidate the evidence.

Our system provides for the mechanism of the Rules 10.3 (motion for judgement over the allegations) and 36 (summary judgement) of the Civil Procedure, 32 L.P.R.A. Ap. III R. 10.3 and 36, to deal with such situations.

In the case before us, the forum of first instance deemed that there was no real substantial controversy as to the material facts, and an evidentiary hearing was not required since there was nothing else to present. The Partido Acción Civil itself recognized this when it requested the mechanism of summary judgement. Given that there was no controversy as to the material facts, there was no violation of due process under the law of the Partido Acción Civil in adjudicating the appeal summarily.

IV

The Partido Acción Civil alleges that the provision of the Electoral Act that requires that it be attorneys that notarize the endorsements of the parties by petition, although it is allowed for notaries *ad hoc* to certify the

endorsements of the members of the traditional parties who aspire to become candidates for the primaries, violates the constitutional clause of Equal Protection under the Law.

Art. II, Sec. 7 of our Constitution prohibits any person in Puerto Rico from being denied equal protection under the law.[3] The guarantee of equal protection under the law does not prohibit or impede the State from establishing classifications for the adequate and efficient discharge of its functions, what it prohibits is unjustified unequal treatment. *San Miguel Lorenzana v. E.L.A.*, 134 D.P.R. 405 (1993); *Zachary International v. Tribunal Superior*, 104 D.P.R. 267 (1975); *P.S.P, P.P.D., P.I.P. v. Romero Barceló, supra; Vélez v. Srio de Justicia*, 115 D.P.R. 533 (1984); *P.R.P. v. E.L.A.*, 115 D.P.R. 631 (1984).

The equal protection clause guarantees that taking into consideration the purpose and scope of the law, individuals who find themselves in similar situations will be treated in a similar manner by the State. *Berberena v. Echegoven*, 128 D.P.R. 864 (1991); Rotunda and Nowak, *Treatise on Constitutional Law*, SS. 18.1-18.2 (1999). Before determining any sort of scrutiny to be applied given an alleged violation of the Equal Protection Clause of the Laws, the court must examine, as a starting point, if the persons excluded from the classification are equally situated as those that were included, or vice-versa. In this

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[3] Section 7 of Art. II of the Constitution of Puerto Rico establishes that "no person shall be deprived of his/her liberty [or property without due process under the law, nor shall] any person in Puerto Rico be denied equal protection under the laws."

manner, in *Calo Morales v. Cartagena Calo,* 129 D.P.R. 102 (1991), upon examination of the application of strict scrutiny under the clause of Equal Protection under the Laws, in those situations where the classification challenged is inherently suspect, we clarify: "Of course, the application of this analysis begins with the premise that the law is providing unequal treatment to persons similarly situated."[4] Id. Page 133

Upon considering if two persons are equally situated, for purposes of the Clause of Equal Protection under the Laws, we must examine what is the purpose of the statute that is challenged. Having examined the purpose of the statute, there must be a determination as to whether the classification established by the Legislative assembly in including some persons and excluding others, is reasonable. If in the exercise of distinguishing between some and other persons, the state deduces, in virtue of the objective that it follows, legitimate reasons that justify the classification, there is no violation of the constitutional guarantee of Equal Protection under the Laws. Rotunda and Nowak, *supra* sec. 18.2. The prohibition of this clause does not imply the exclusion of any differentiation between the persons, if said differentiation has an objective and rational justification. For illustration purposes see, *Katzenbach v. Morgan,* 384 U.S. 641 (1966); *Railway Express Agency Inc. v. New York,* 336 U.S. 106, (1949).

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[4] See also R. Serrano Geyls, *Derecho Constitucional de Estados Unidos y Puerto Rico,* 1078 (1988): "The Constitution should recognize equal rights to citizens when they are equal, and unequal rights when they are unequal."

V

We must examine the motive behind the Legislative Assembly establishing different requirements for the registration of political groups as parties by petition and those established for the candidates for primaries in already established political parties. There is no question that both types of requirements, although different, in essence seek to protect the important interest of the integrity of the political process from frivolous and fraudulent political candidacies, at the same time insuring that the electoral process be efficient and free of confusion.

However, differing from the requirement of *ad hoc* notaries for the oaths in the registration petitions of the candidates to primaries, the legislative requirement of intervention by a notary public for the sworn registration petitions of the parties by petition, answers more to the need to establish a registration mechanism to, under the presumption of the public faith in the notary system, guarantee the highest degree of purity to the process. *P.S.P., P.P.D y P.I.P. v. Romero Barceló, supra.*

In making a distinction between the requirement for the registration of political groups in the process of registration as parties by petition, from those required of the candidates from already established political parties, the Legislative Assembly answers to reasonable and legitimate interests. The differences that exist between political associations in the process of registration and candidates to the primaries from already established political parties, allow and justify different treatment regarding the requirements of sworn registration petitions for each one.

This dichotomy in the regulation exists for a reason. We explain as follows.

The difference between political parties and political groups in the process of registration has been repeatedly recognized by our jurisprudence. It is not until the political group has satisfied all requirements under the electoral laws for its registration that it is deserving of equal treatment as a traditional party. *P.R.P. V. E.L.A.*, 115 D.P.R. 631 (1981).[5]

This Court has recognized the preeminence of the political parties as vehicles that facilitate the organization and effectiveness of collective participation by individuals. *Sánchez y Colón v. E.L.A. II*, 134 D.P.R. 503 (1993). In our democratic system, political parties are indispensable and constitute a vehicle of expression to peacefully channel the different political tendencies and interests of the various areas of national opinion. *P.R.P. v. E.L.A., supra.* It is in virtue of its *quasi* public character that they are granted a subsidy through the electoral fund to finance its activities. *P.S.P. v. E.L.A.*, 107 *supra.* D.P.R. 590 (1978).

Political parties should comply with rigorous electoral norms and operate under a scheme designed so that the state can supervise and control its political, its administrative and financial activities. Differing from this, political groups that are not political parties are not subject to

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[5] In particular, federal jurisprudence has established that, as far as registration requirements imposed by the state, political groups that aspire to become independent candidates are not similarly situated as established parties. For illustration purposes, see *Clements v. Flashings*, 457 U.S. 957, (1982).

this sort of scrutiny, and for this reason cannot be favored with the granting of public funds. *P.S.P. v. E.L.A., supra.*

For its part, the primary process for candidacy is one through which the voters of the political parties nominate candidates to elected public positions. Art. 1.003 (47) of the Electoral Act, 16. L.P.R.A. 3003 (47). It is process that is intrinsically particular to the established political parties, which through their history, have already demonstrated electoral support.

The hopefuls and candidates to elected positions, upon being certified through the endorsements, do not receive support whatsoever from public funds. The certification only gives them the right to a ballot next to other hopefuls, and are then submitted to public scrutiny, first during the primaries and later in general elections.

Differing from candidates in primaries from parties that have already demonstrated having the support of the voters, political groups that wish to register as parties must be able to demonstrate that they have the support of enough voter backing.[6] The State can, validly, establish

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[6] The concern of the Legislative Assembly with insuring that the electoral process is open to *bona fide* political organizations has been consistent. The report of the Government Commission of the Senate of November 3, 1978, to the P. of the H. 896, precursor to Public Law No. 4 of November 15, 1978, which amended Article 3.001 of the Electoral Act to add the requirement that all petitions for registration be sworn to before a notary public so states:

> "A political party that was able to register as a political party by petition to participate in the general elections of 1976 does not need the strict guarantee

requirements to require a preliminary demonstration of support by the electorate. These requirements can be formulated with conditions to appear on the electoral ballot. For illustration purposes see, *Jenness v. Fortson*, 403 U.S. 431, 442 (1971).

The interest of the State in insuring that it is dealing with a *bona fide* political group with the backing of the electorate is more important still if we take into consideration that once a party is registered, political groups participate in the Electoral Fund, they have the right to an Electoral Commissioner and to have a full time representative in the Boards of Permanent Registration in charge of the public treasury. Given this reality, it is justified for the State to establish a stricter evaluation and certification process.

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that its petitions for registration to participate in the general elections of 1980 be sworn to before a Notary Public, sufficing, so that the law is effectively complied with, that its petitions be sworn to before authorized electors [sic] by the State Commission of Elections for that purpose. The effort of once again registering a political party in the period after general elections in which said party lost its judicial personality as such, is demonstrative of it being a *bona fide* political group.

Nevertheless, we understand that the requirement that the petitions be sworn to before notary publics should be maintained in the case of patties which are in the process of registration for the first time, safeguarding in this manner the purity of the process and guaranteeing that they are *bona fide* political groups."

After examining the report filed by the Government Commission of the House of Representatives to the P. of the H. 896, precursor to Public Law No. 4 of November 15, 1978, which amended Art. 3.001 of the Electoral Act and added the requirement that the petitions for registration of parties by petition be sworn to before a notary public, demonstrate the concern of the Legislative Assembly regarding the participation in the Electoral Fund:

> "A point of great importance that should be considered in approving this Bill, is the provision under the current Electoral Act referring to the electoral Fund. Given that such fund is part of the public treasury, participation in it must be safeguarded so that it is not handed to parties by petition that were fraudulently registered, and to the contrary, so that any party that has the endorsement of a truly interested sector which was registered legally as a new party will participate in it." Report of the Government Commission of the House of October 24, 1978.

Given the previously stated, we conclude that political groups that aspire to become parties by petition are not in equal standing with the candidates of established political parties. There is a legitimate and objective justification for the State to establish more rigorous requirements for the petitions for registration of political groups that aspire to become political parties by petition, than those requirements established for the candidates in primaries.

The Legislative Assembly has a legitimate interest in requiring a *prima facie* demonstration of electoral support from political groups that file petitions for registration, and to establish a mechanism to guarantee the reliability

of said petitions. In our system this mechanism is the swearing of the petitions before a notary public, and the public faith that said intervention by such an officer affords it.

The Partido Acción Civil also alleges that during the plebiscite of December 13, 1998, Pro E.L.A. was allowed to swear in the endorsements required to have access to the plebiscite ballot and to campaign with public funds as a representative of free association, before officers authorized by law to take oaths and by *ad hoc* notaries that were authorized by the C.E.E.

About said allegation, suffice it to say that the requirements for official representation in the plebiscite options, which were requirements satisfied by Pro E.L.A., were established through special law, Art. 10 of Public Law no. 249 of August 17, 1998, known as the Plebiscite Act of 1998.[7] The purpose of said law was to make viable an elections process that answered to the controversy of the political condition of the inhabitants of Puerto Rico concerning the United States. Art. 1 Plebiscite Act of 1998. It was in response to the special nature of the plebiscite process that the Legislative Assembly set the process to be followed.

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[7] Art. 6 of the Plebiscite Act established that the provisions of the Electoral Act would be applicable to the plebiscite process in everything for which the special plebiscite act had not provided a different regime. This is congruent with Art. 7.0001 of the Electoral Act, 31 L.P.R.A. sec. 3301, which states that the celebration of a referendum or plebiscite would be ruled by special law approved for that purpose.

In the regular elections process, the parties which have gained access to the ballot, present to the electorate their candidates to guide the destiny of Puerto Rico. Said candidates, if elected, would make up our government for the next four years. The State has a legitimate interest in that those candidates legitimately represent the interests of the sector of the population which gave them its trust. For this reason, it is necessary to establish strict requirements that guarantee the process has been free of fraud and corruption. It would be a grave situation if after certain candidates have been elected, and after having them having taken their oath, it was discovered that the party that sponsored them had been registered fraudulently.

Differing from this, the plebiscite process is not one to elect candidates or to establish the government of Puerto Rico. By its nature, it seeks to grant access to the diverse ideologies existing about the political future of Puerto Rico.

We should point out that the Plebiscite Act of 1998, like the Electoral Act, treated groups requesting to represent one of the status options, differently from established parties. Art. 10 of the Plebiscite Act of 1998 provided for official participation of the political parties established to be insured through simple written notification by its ruling body to the C.E.E. within a term established by law, by its directive organisms.

The opportunity to participate by other political groups was regulated specifically. In the first place, it was provided that political organizations could request that they be certified to officially represent an option, as long

as said option was not already represented by a political party. Furthermore, in order to obtain said certification, the group would need to certify before the C.E.E. that it had a judicial personality at the time the Plebiscite Act was passed and a public and recognized history in defense of the option it expected to represent; to file before the C.E.E. a number of endorsement petitions equivalent to not less than three percent (3%) of the electorate that voted in the 1993 Plebiscite for the status option that receives the least votes in that consultation; said petitions could be sworn by officers authorized by law to take oaths and by those so authorized by the C.E.E. Public Law No. 249 of November 17, 1998, Art. 10(3).

That is, the Legislative Assembly opted for different requirements for groups interested in participating in the 1998 plebiscite in representation of one of the options not represented by a political party and different requirements for already established political parties, from those required from parties by petition for the general elections.

The argument of the Partido Acción Civil rests on the fact that Pro ELA, as a political group that represented the option of free association was certified to participate in the plebiscite through oaths taken by *ad hoc* notaries, and at the same time participated in the special funds assigned for the plebiscite. Regarding this argument, we must point out the differences between the participation of a duly qualified political group to defend a status option in the plebiscite funds and the participation of the registered political parties, whether they be the main ones or by petition, in the Electoral Fund.

The Electoral Fund is a permanent fund which guarantees to all political parties, the main ones and those by petition, $300,000.00 per non-election year and $600,000.00 on election years. Electoral Act, Art. 3.023, 16 L.P.R.A. sec. 3116. The special funds assigned to the parties and qualified political groups that participated in the 1998 Plebiscite consisted in a one time and short term allocation of $2,000,000.00 to be distributed in equal parts among all the political parties and certified political groups. Art. 20 of the 1998 Plebiscite Act, *supra*.

Given what was previously stated regarding the nature of the plebiscite process and the character of the public funds assigned by said process, we conclude that political groups that aspire to become parties by petition are not situated equally to the political groups in a plebiscite process. There is a legitimate and objective justification for the State to establish more rigorous requirements for the registration petitions of the political groups that aspire to become political parties by petition. Once recognized as parties by petition, said groups have the right to present candidates to elected positions in general elections, and substantial yearly participation in the Electoral Fund.

VI

Lastly, we must examine the allegation by the Partido Acción Civil that the provisions challenged violate the right to association, expression and to effective vote under the doctrine of free access to the electoral ballot, and that the legislation affects its right to be a candidate to public office.

In the first place, we must point out that although the right to vote and to association are fundamental in character, and their exercise entails the right to vote in a given manner, neither the right to be a candidate to elected office, nor appearing as an association in the electoral ballot, are fundamental rights. *García v. Luciano,* 115 D.P.R. 628, (1984), *P.P.D. v. Planadeball Pöggy,* 121 D.P.R. 570 (1988). For illustration purposes, see also, *Clements v. Flashing,* 457 U.S. 957, 963 (1982), *Munro v. Socialist Workers Party,* 479 U.S. 189 (1986); *Burdick v. Takushi,* 504 U.S. ___, 119 L. Ed.2d 245 (1992).

Given the interest of the state in avoiding electoral chaos and confusion, states have the authority to regulate the requirements necessary for access to the electoral ballot. However, such power is not absolute. The regulation mechanism utilized by the state cannot have the purpose of excluding certain types of candidates and parties from the electoral process. That is, the provisions about access to the electoral ballot cannot restrict in an unnecessary or discriminatory manner the opportunities of a candidate or of a political group to have access to the voters, nor can it operate to exclude certain types of candidates or parties from the electoral process. For illustration purposes see *Lubin v. Panish,* 415 U.S. 709, 716 (1974)

In *Sánchez v. Colón v. E.L.A. I,* 134 D.P.R. 445, 450 (1993), we examined the delicate balance between the fundamental right to suffrage and the interest of the State in regulating its exercise, and we came to the conclusion that the analysis process is to study the particular circumstances of each case. There is no rigid and invariable criteria that must be used in this type of judicial analysis.

Federal jurisprudence related to the doctrine of access to the ballot has elaborated the scrutiny to be applied when it is alleged that any provision by the State restricts a candidate, or an association, to access to the electoral ballot. Said jurisprudence was the object of an analysis in *Sanchéz v. Colón v. E.L.A. II*, 134 D.P.R. 503 (1993) (Assenting Opinion by Associate Judge Hon. Andréu García).

In those cases where the constitutionality of a law that regulates access to the electoral ballot is challenged, the courts are not automatically required to apply strict scrutiny. Submitting automatically each electoral provision to scrutiny would tie the hands of the state in their task of regulating in order to guarantee that the elections take place in a fair and efficient manner. For illustration purposes see *Bullock v. Carter*, 405 U.S. 134 (1972); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi, supra*.

Given the claim of unconstitutionality under the doctrine of free access to the ballot, the Court must, in the first place, determine if the restriction is severe, unreasonable or discriminatory, and examine the nature and magnitude of the alleged damage and the dimension of prejudice caused. If it is determined that the restriction is severe, unreasonable or discriminatory, the regulation shall be subject to strict scrutiny.

Under the doctrine of free access to the ballot, it is understood that any restriction which has the effect of making it impossible for any new candidate or political association to have access to the electoral ballot is severe.

The question to be answered is if a candidate that exercises reasonable diligence can satisfy the requirements imposed by the State.[8] For illustration purposes see *Storer v. Brown*, 415 U.S. 724 (1974); *Jennes v. Fortson, supra; Norman v. Reed*, 502 U.S. ___, 116 L.Ed.2d 711 (1992).

In those cases where the restriction imposed by the statute is reasonable and non-discriminatory, the standard of balance of interest is applied. In this process, governmental interests justified by the imposition of the restrictions challenged are analyzed and are weighed against the nature and magnitude of the damages alleged by the plaintiffs to their right to vote and free association. Then, there is a determination as to whether the governmental interests claimed by the State in adopting the regulation are legitimate, and if the importance of those interests justify the imposition of the regulation challenged. Within this analysis, an important interest of the State would be to support the constitutional validity of the regulation. *Sánchez y Colón v. E.L.A. II, supra; Anderson v. Celebrezze, supra; Burdick v Takushi, supra.*

It is up to us then to identify and evaluate what is the nature and magnitude of the damages alleged by the Partido Acción Civil, and to determine if restrictions imposed by the articles challenged of the Electoral Act

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[8] The lower federal courts, in analyzing the burden of the restrictions imposed, used what is known as the totality approach. This entails considering the burden imposed by the provision challenged keeping in mind the totality of the electoral scheme. *McLaughlin v. North Carolina Bd. of Elections*, 65 F.3d 1215 (4th Cir. 1995); *Schulz v. Williams*, 44 F. 3d 48 (2d Cir. 1994).

are unreasonable or discriminatory. If there is a determination that said restrictions are reasonable and non-discriminatory, then we must evaluate the governmental interests that justify the imposition of the regulation, given damages to the right to vote and free association alleged by the Partido Acción Civil.

The Partido Acción Civil alleges that both provisions challenged are extremely burdensome, unreasonable and discriminatory and impossible to comply with, and they answer to partisan oligarchy. It alleges that given said provisions, it will be impossible for them to comply, within the term required, with the number of endorsements that must be presented before the C.E.E. to obtain registration as a party by petition.

Furthermore, it alleges that the requirement to give oath before a notary public places unnecessary obstacles to its right to free access to the electoral ballot and that it limits the creation of the political parties to the class of attorneys. It alleges that the requirement to give oath before a notary public limits the number of endorsements that can be collected, given the limited total number of attorneys in our jurisdiction. It states that no attorney is willing to leave his/her office to collect endorsements, because the fees received for each endorsement is $1.00, which represents a loss.[9] It also alleges that said requirement forces it to first hold a campaign to recruit notaries to then recruit voters, which becomes very costly.

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[9] Notaries receive from the C.E.E. a dollar for each valid notarized petition as fees for their work. Art. 3.0001 (3) of the Electoral Act, 16 L.P.R.A. sec. 1301 (3).

Regarding the requirement of submitting duly sworn endorsements to the C.E.E. within seven days, the Partido Acción Civil alleges that this is a burdensome and unreasonable term given that it is too short a period to render the written reports required, make copies, verify endorsement against electoral lists and take them to the C.E.E.

There is no doubt that the allegations by the Partido Acción Civil demonstrate that the provisions challenged make it more difficult for a political group that wishes to have access to the electoral ballot be recognized as a party by petition. However, we cannot agree that its allegation that the requirements imposed make it impossible for a political group to obtain its registration. In present day Puerto Rico,[10] there are 6,735 notary publics distributed throughout the island. Furthermore, history has shown that in 1984, the Partido Renovación Puertorriqueña was able to get registered having to comply with the same requirements as those now challenged by Partido Acción Civil.

An analysis of the provisions challenged demonstrate, in the first place, that said challenged provisions are not discriminatory. They apply equally to any political group that aspires to participate in the electoral ballot as a party by petition, regardless of its political or social ideology.

As far as reasonability of the restrictions, we must examine the interests of the State in such an imposition, if said interests are legitimate and if its importance justifies the imposition of the regulation challenged.

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[10] February 24, 2000.

A. Requirement that the petitions for registration be sworn to before a notary:

Public Law No. 4 of November 15, 1978 amended Article 3.001 of the Electoral Act and added the requirement that petitions for registration of parties by petition be sworn to before a notary public. The reason for said requirement was given in the Report of the Government Commission of the P.R. Senate regarding the P. of the H. 896:

> Inadvertently and in considering and approving the current Electoral Act, the requirement that the petitions to register parties by petition be sworn to was not included, and it is now our intention to correct said omission, adding the word[s] sworn to cases where there is reference to the petitions for registration. With this, we fill an existing gap, following the tradition of the registration process of the parties by petition.
>
> .....
>
> The requirement of an oath for the petitions for registration establishes a guarantee of the veracity of the intention of the voter expressed in the petition, and the purity of the registration process of the parties is protected. This also allows sanctions for any illegal act by the person taking the oath. *In Re Jorge Landín and José Aulet*. Opinion of April 13, 1978.
>
> Our political history is full of examples regarding parties that either were not able to get registered, or if they were able to, did not maintain their status for very long, demonstrating in this manner the lack of solidity and scope desirable in a solid and stable democratic system,

> [sic] as is the one in Puerto Rico . . . Report of the Government Commission of the Senate of November 3, 1978.

The report of the Government Commission of the House of Representatives summarized the interest of the State in requiring the intervention of notaries:

> The requirement of sworn petitions for the registration of a party by petition establishes a public trust of the veracity of the intent of the voter to create a new Party that will represent the political interest of a sector of the People of Puerto Rico and guarantees the purity of the process. Report of the Government Commission of the House of Representatives of October 28, 1978.

In Puerto Rico, notaries are officers in charge of guaranteeing the authenticity of the signature made before them, through notary public faith. Art. 2 of the Notary Act, 4 L.P.R.A. sec. 2002. The intervention by a notary grants a certain presumption of veracity to the documents on which they intervene. With the requirement of the intervention by a notary, the Legislative Assembly opted to guarantee the reliability of the petitions through the participation of the only officers vested by the Supreme Court to guarantee, with the operating under public faith, those documents sworn to. *In re: Notaría de la Lic. Algarín Otero,* 117 D.P.R. 365 (1986).

Notaries are the sole officers of the notarial certification. They have the obligation to strictly comply with what has been established by the Notary Act. They should be diligent and abstain from attesting if the person that is going to give the sworn statement has not

personally appeared, or if the facts that they sign to are inconsistent with the truth. *In re Sánchez Ruiz*, 105 D.P.R. 848 (1977); *In re Fred H. Martínez*, res. April 12, 1999, 99 TSPR 53.

The notary practice is rigorously regulated in our jurisdiction. Testimonies or declarations of authenticity are regulated under public faith by Articles 56 to 60 of the Notary Act, 4 L.P.R.A. sec. 2091 etc, and by Rules 64 to 73 of the Notary Regulation, 4 L.P.R.A. Ap. XXIV R. 64 to 73. The law and the Regulation require that they be registered with the Registry of Testimonies and that they be reported in the Monthly Index that must be filed by every notary. The notary has the obligation of attesting both in the testament as well as in the Registry of Testimonies, of his personal knowledge of the undersigned or in his absence, the use of supplementary methods in Art. 17 of the Notary Act. The Registry of Testimonies is reviewed by Protocol Inspectors to insure that the notary has complied rigorously with the provisions under the law.

The provisions of the Notary Act, Canon 35 of Professional Ethics, 4. L.P.R.A. Ap. IX C. 35, imposes on the attorneys the obligation to 'adjust to the sincerity of the acts [. . .] in drafting an affidavit or other documents." *In re: Rivero Arvelo y Ortiz Velázquez* 132 D.P.R. 849 (1993); *In re: Chaar Cacho*, 123 D.P.R. 655 (1989). If the provisions under the Notary Act or the Professional Ethics Canons are not complied with, the notary is subject to severe disciplinary sanctions.

It is an undisputed fact that the State does not have enough officers to control the legitimacy of the process of

the endorsements for new parties. The Legislative Assembly has required the intervention of notaries, the only officers authorized to act based on the operation under the public faith, as an initial screen that grants the presumption of veracity to the endorsements obtained.

The intervention by the notary answers also to immediate interest of the electoral process, in face of the history of electoral fraud and corruption in Puerto Rico. The practice popularly known as "emptying of lists" (*vaciado de listas*), documented in our political history during the registration of the Partido Acción Cristiana in the decade of the sixties, justifies the requirement of an oath before a notary. *In re: Jorge Luis Landín y José Aulet*, 107 D.P.R. 103 (1978);, *In re: María Luisa Ramos*, 86 D.P.R. 125 (1962); *P.S.P. v. Romero*, 110 D.P.R. 248 (1980).[11]

Taking into consideration that the petition for endorsement is the instrument through which, once the number required under the law is obtained, a political group is registered as a party, with all the prerogatives recognized under the law, such as participation in the Electoral Fund, and a notary is the only officer vested with the public trust, the requirement for the intervention of a notary in the swearing of said endorsements is necessary given our history of electoral fraud and corruption and it is a reasonable and legitimate requirement.

We also conclude that the interests of the state in guaranteeing the integrity of the electoral process, of

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[11] Through our electoral history, the criminal statutes against electoral fraud have been ineffective as preventive measures against fraud. *P.S.P. v. Romero*, 110 D.P.R. 248 (1980).

guaranteeing that the signatures in the registration endorsement are reliable and in requiring that political groups that wish to obtain access to the electoral ballot be able to demonstrate that they have the support of the electorate, are legitimate interests and of the utmost importance. We have no doubts that the importance of said interests justify the imposition of the provision challenged.[12]

B. The requirement that the petitions for registration be submitted within seven days after having sworn to them:

The Partido Acción Civil alludes to the fact that it is impossible to present before the C.E.E. the original petition and two copies of each endorsement, as well as preparing the reports of the petitions that are to be presented, with their respective copies within a seven day term. We are not persuaded by their arguments.

The Electoral Code of 1974, as amended, precursor to the current Electoral Act, established that the filing term for the petitions would be 72 hours, with the possibility of a 48 hour extension, if circumstances merited it. The Legislative Assembly amended said provision to extend the term of said provision to seven days. We consider this seven day term granted by Art 3.002 as reasonable, it is possible to comply with it and it answers to a legitimate interest of the State.

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[12] The requirement that the registration documents of a party be notarized was valid in the federal jurisdiction in *American Party of Texas v. White*, 94 S. Ct. 1296 (1976)

The requirement that the sworn registration petitions be presented before the C.E.E. within a seven day period of their execution answers to the interest of the State to avoid an accumulation of multiple registration petitions close to the deadline for party registration. Furthermore, it provides the opportunity for the C.E.E. to notify the group in process of registration, of the number of valid registrations, with enough time to correct any defects in the ones rejected. Said interests are legitimate and valid.

In order to guarantee an adequate examination of the endorsements submitted, given the limited resources of the C.E.E., a mechanism is necessary to gradually examine the petitions, to determine if have been duly perfected. The Legislative Assembly chose the seven day term, which is not unreasonable or excessively burdensome.

Given the allegations of the Partido Acción Civil that it needs to submit 97,784 petitions, the seven day requirement is broadly justified as a mechanism to get the C.E.E. to examine, in gradual and successive periods, the validity of the endorsement submitted.[13]

VII

Before closing, we must point out the following.

Although it is true that the registration process of a political group should not be surrounded by conditions

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[13] A similar requirement was valid in *Matthews v. Morris*, 515 F. Supp. 935, 649 F. 2d 280 (4 Cir. 1981).

and requirements such that would impede the legal organization of a political party thus frustrating the expression of a nucleus of the citizenship, and with it creating an attempt against the very essence of democracy, *Partido Popular v. Gallardo*, 56 D.P.R. 706 (1940), we should not forget that in the exercise of its constitutional authority to regulate the elections process, the Legislative Assembly has the authority to establish reasonable and non-discriminatory requirements for the registration of new parties. Independent from our personal position about the advantages or disadvantages for which our democratic order supposes the concurrence of a multiplicity of parties to the electoral ballots, our function in this case is to determine if the provisions challenged are unconstitutional.

In the exercise of this authority to regulate the elections process, the Legislative Assembly has, throughout the years, amended the Electoral Act, liberalizing the registration requirements for new parties and independent candidates.[14]

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[14] We take judicial knowledge of the presentation by the P of the H. 2438 of March 24, 1999, to amend Art. 3.001 (3) and 3.002 of Public Law No. 4 of December 20, 1977 as amended, known as the Electoral Act, to establish that the parties by petition could file sworn petitions before the C.E.E., in addition to doing so before notary publics, before any officer or employee of the C.E.E. authorized by it to perform that function and to extend the term for filing said petitions before the C.E.E. from 7 to 15 days.

Regarding said Bill, the Report of the Government Commission of the House recommended increasing the payment to the notaries from $1.00 to $2.00, to lower the number of registration petitions to 4%, extend the term from 7 to 15

As part of the electoral reform of 1983, Art. 3.001 of the Electoral Act was amended, 16 L.R.P.A. 3101, to eliminate the dispersion requirement.[15]

From an examination of the electoral scheme in effect in our jurisdiction, we see that in Puerto Rico, a new political party can be formed at any time. The registration period for our parties covers the entire natural year, except for the period from June to November of the general elections years. Among the current provisions that regulate the registration of new parties, there are some that are specially designed to facilitate the registration of new political groups; the requirement for the $3.00 stamp of legal assistance is waived in the sworn registration petitions, Art. 1 of Public Law 126 of August 12, 1996, 16 L.P.R.A. 3028; and furthermore, the C.E.E. pays the promoting group $1.00 for each valid notarized petition as attorney fees. Art. 3.0001 (3) of the Electoral Act, 16 L.P.R.A. sec. 1301 (3). Within our electoral scheme there are also other alternatives, aside from forming parties by petition, to have access to the electoral ballot: the independent candidate and the direct vote. Art. 4.027 of the Electoral Act, 16 L.P.R.A. 3177, and Art. 5.11 of the Electoral Act, 16 L.P.R.A. 3211.

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days, and that the petitions be sworn to before notary publics are well as officers and employees of the Boards for Permanent Registration (Juntas de Inscripción Permanente) authorized to perform that duty.

[15] Until 1983, in order to register a party by petition, the presentation of sworn petitions was required with no less than 5% of the total votes for the position of Governor in the previous election, and that 5% was to be distributed geographically throughout at least, half or more of the electoral precincts.

Having examined the provisions challenged by the Partido Acción Civil, we come to the conclusion that they do not violate the doctrine of access to the electoral ballot. Said provisions are not discriminatory, since they impose the same requirements to all political associations that aspire to become a party by petition, independently of their ideology or ideals. Although the provisions challenged, do impose a burden on the Partido Acción Civil, it is not as severe as to make it impossible for a political group with a reasonable degree of diligence to obtain access to the electoral ballot.

Regarding the allegations that the Partido Acción Civil has received unequal treatment regarding the candidates to primaries of traditional political parties, and to political groups in the plebiscite process, we conclude that political groups that aspire to register as parties by petition to participate in general elections are not equally situated as the candidates to primaries of the political parties and political groups that concurred in the last plebiscite.

The provisions challenged constitute a reasonable exercise in the discretion of legislative power to further legitimate interests and those of singular importance. The objective of guaranteeing an electoral process that is fair and free of fraud justifies the imposition of said requirements on the Partido Acción Civil.

It is the duty of the Legislative Assembly, and not this Court, to modify, if deemed necessary, the requirements for the registration of a party by petition. Said authority is constitutional in nature, Const. De P.R., Art. VI, Sec. 4 and as such deserves our deference.

Corresponding Judgement is issued.

[Signed]
Federico Hernández Denton
Associate Judge

IN THE SUPREME COURT OF PUERTO RICO

Partido Acción Civil	)	No. AC-1999-20
Petitioner	)	Certiorari
v.	)	
Commonwealth of Puerto Rico, et al	)	
Appellees	)	

JUDGEMENT

San Juan, Puerto Rico, February 25, 2000.

Based on the preceding opinion, which is made an integral part of the document at hand, the Judgement by the Appeals Circuit Court is confirmed upholding the constitutionality of Arts. 3.001(3) and 3.002 of the Electoral Law, Law No. 4 of December 20, 1977 as amended. 16 L.P.R.A. 3103 (3) and 3102

It is so pronounced and mandated by the Supreme Court. Associate Judge Hon. Negrón García issued the Dissenting Opinion. Associate Judge Hon. Naveira de Rodón and Associate Judge Fuster Berlingeri dissent without written opinion.

[Signed]
Isabel Llompart Zeno
Secretary of the Supreme Court

IN THE SUPREME COURT OF PUERTO RICO

Partido Acción Civil Petitioner v. Commonwealth of Puerto Rico, et al Appellees	)	No. AC-1999-20

Dissenting Opinion of Associate Judge
Hon. Negrón García

San Juan, Puerto Rico, February 25, 2000.

"No one would ever say that there should be undue obstacles in the path of a new and responsible political movement that wishes to include its candidates in the electoral ballots so that the public can evaluate them. On the other hand, no serious political observer would defend the rights of frivolous and opportunistic 'parties' to confuse the ballot and the electorate. The problem is to determine if the concern of those opposed (to the new parties) due to fact that it would threaten the pleasant 'stability' of the present system is justified or not." M. Pabón, *Los Derechos y los Partidos Polfticos en la Sociedad Puertorriquena*, Ed. Edil, San Juan, 1968, page 110.

I

The subordination of political order to the rights of man and insuring free participation of the citizen in collective decisions – Preamble, Constitution E.L.A.-, becomes illusive when undue obstacles are placed on

individual access to the ballots, and to the right to associate and form groups and candidates. Ortiz v. Barreto, 110 D.P.R. 84 (1980); P.S.P. v. C.E.E., 110 D.P.R. 400 (1980); García Passalacqua v. Tribunal Electoral, 105 D.P.R. 49 (1976).

The unquestionable authority of the Legislative Assembly to regulate these rights is not absolute: **equality in treatment is a requirement *sine qua non* to validate the process itself**. Gimenez v. J.E.E. 96 D.P.R. 943 (1968); P.R.P. v. E.L.A., 115 D.P.R. 631, 638 (1984). If in face value or in practice, legislation is unreasonably burdensome and substantially inhibits the genesis of new parties, or it creates situations of inferiority, the courts under **strict judicial scrutiny** have the duty to replevy the right **to vote, association, and electoral equality**. If the equalitarian principle which should rule in any electoral process is sacrificed, **maintaining or introducing** different and more burdensome rules – thus diminishing the real potential of the citizen to organize in order to participate collectively in the political process (without the State being able to oppose and demonstrate imminent interest) – our judicial responsibility is to reject it in favor of the **fundamental constitutional rights** involved. The goal of the **P.A.C.** to become part of the ballot as a partisan political option in the next elections has been frustrated with the respectable majority opinion.

II

The requirement for **exclusive swearing of the petitions for endorsement before a notary public** established

by Art. 3.001 (3) of the Electoral Act,[1] Public Law No. 1 of November 15, 1978 was justified based on the perception of the Legislative Assembly of "complying with a tradition in our process of registration of parties by petition." (*Report of the House of Representatives, October 24, 1978*).

The history of the original Electoral Act of 1919 to the electoral code of 1974 and the Electoral Act of 1977 does not support the legislative conclusion and the existence of that "tradition". The requirement of **"notary exclusivity"** was established in **1978**. In the Puerto Rican Electoral environment, the legal reality had always been very broad: to swear before any officer duly authorized by law and judges; in fact in the decade of the 1960's, the Presidents of the Local Electoral Boards were added.

The present legislative imposition that registrations may be sworn **only before notaries**, is a clear restriction given the easy access to other officers available to travel throughout the island on a full time basis in public duties.

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[1] Reads as follows:

"A 'Party by Petition' shall be considered to be any group of citizens with the goal of participating in the electoral ballots in general elections on or before the first of June of the election year which registers as a political party by filing the petitions before the Commission sworn to that effect, before duly admitted notary publics, . . . , who will receive from the Electoral Commission (1) dollar for each notarized petition as fees, undersigned by no less than five (5) percent of the total votes deposited for all candidates to Governor in the previous election . . . "

Recruiting exclusively attorneys-notaries so that, for a mere $1.00 per petition, asking them to set aside the practice of law and concentrate their work in this type of activity of registration is burdensome. We also make note of the responsibility to file before the State Commission notary reports every fifteen (15) days – containing an accounting of the petitions for registration which have been notarized (Sec. 3.3 of the Regulation for the Registration of Parties by Petition)-, the task becomes even greater when preparing their Registries of Testimonies and Monthly and Yearly Indices required under the Notary Act.

The legitimate reason for the requirement of **notarial exclusivity** which the State claims prevents fraudulent and frivolous candidates, given that the signatures are being reliable and that the political groups have the support of the electorate, were guaranteed without stifling the birth of new parties.

Sec. 6.1 of the Regulation for the Registration of Parties by Petition, creates a process of revalidation of petitions in the **Validation Section** of the State Commission, where its officers determine "the correctness, legality and validity" of each petition and it verifies them against the records and archives of the Commission. Among the bases for rejecting a petition of registration there is that "the signature of the petitioner [is] incompatible with what appears in the petition of registration as voter." Sec. 4.7 (f). Differing from the majority thesis, the State Commission, a duly notarized endorsement does not totally afford it the presumption of correction and legitimacy.

There should not be any doubt that given the majority rejection of the alternate mechanism allowing for the signatures of the endorsement petitions to be also made before the officers of the Permanent Registration Boards (Junta de Inscripciones Permanentes) of each municipality,[2] the requirement for notarial exclusivity established by Art. 3.001 (3) of the Electoral Act, is unconstitutional: there are less cumbersome means to safeguard the interests of the State.

Today's decision is a clear judiciary example of Partisanship prevailing over Democracy.

[Signed]
ANTONIO S. NEGRON GARCIA
Associate Judge

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[2] These Boards perform a **continuous** registration, transfer and relocation process of voters, which are matters where electoral purity must prevail. Its authenticity and availability on a full time basis and the authentication of the signatures supports certifications issued by its offices – they will achieve the same legislative goals. This mechanism is **supplementary to the use of notaries** and in historic terms is closer to what has been the "tradition" regarding the registration of new parties. This alleviates the burden of recruiting attorney-notaries as the sole legal option available for the authentication of signatures.